Supreme Court, U.S.
FILED
MAR 23 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-868

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

JAMES A. BRINGLE and
NORMA L. BRINGLE, Petitioners,

vs.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al., Respondent.

PETITION
FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS STATE
OF WASHINGTON DIVISION II

REPLY BRIEF

JAMES A. BRINGLE
NORMA L. BRINGLE
15092 SULTANA ST.
HESPERIA, CA. 92345
(619) 244-6237

TABLE OF CONTENTS

page

Statement---------- 1

ARGUMENT---------- 1

1. Parent child relationship did exist---- 1

2. Notice was difficient---------- 2

3. Mis-Stated information---------- 5

4. Issue is not moot---------- 6

5. Decision below was not correct--------- 7

Conclusion---------- 10

Table of authorities

Drollinger v Milligan, 552 F.2d 1220, 1226-27 (7th Circ 1977)---------- 1

Karst"the freedom of Intimate association 89 Yale L.J. 624 (1980)---------- 2

Moore v City of East Cleveland, 431 US 494 97 S.Ct. 1932,52L.Ed.2d 531(1977)---------- 1

Roberts v U.S. Jaycees 104 S.Ct. 3244, 82 L.Ed.2d 462(1984)---------- 2

Smith v OFFER431 US 816,97 S.Ct.2094, 53 L.Ed.2d. 14 (1977)---------- 1

Wilson v Taylor,733 F 2d 1539 (11th cir) (1984)---------- 1

STATUTES

Wash. Rev. Code ch 13.34.210---------- 4

Wash. Rev. Code ch 26.27.050---------- 2,7

Wash. Rev. Code ch 74.12.300,310,320------ 2

28 U.S.C. & 1738A---------- 2,7

42 U.S.C. & 601---------- 2

F 2d 1539 (11th Cir.1984)(interference with dating relationship actionable under & 1983). Moreover the freedom of intimate association protects associational choice as well as biological connection. See Jaycees, 104 S.Ct. at 3249-51; See generally, Karst, "The Freedom of Intimate Association," 89 Yale L.J. 624 (1980).

2. Notice was difficient and the washington state court of appeals was in error when it ruled that no notice was even required to be given to the Bringles. This opinion is in conflict with the Washington State Code Chapter 74.12.300, 74.12.310 and 74.12.320 and Chapter 26.27.050, and also does not comply with the federal statute 28 U.S.C. & 1738A furthermore the court of appeals opinion would not be consistant with Title IV of the Social Security Act (42 U.S.C. & 601 etc.). Also the states contention that no notice was required conflicts with River v Marcus and Drollinger v Milligan. The Bringles relationship with their grandchildren does fall within the constitutionally protected range and since the review hearing was held out of the Bringles

and their grandchildrens home state and where the Bringles were not parties and their privacy interst were being impaired with out a fair opportunity to respond even if the state gave them 7 days notice would not seem fair. Though the Bringles cited through out the state court proceedings that they believed they had a liberty interest in protecting their family and argued that their due process rights were violated. The court ignored claim for consttutional protection and would not even acknowledge the existence of the constitutional principle on which the Bringles were basing their claim. No where in the court of appeals opinion or the lower courts does the state mention the Bringles consttutional claim only now are they beginning to acknowledge that it could exist. The fact finding procedures employed by the state Courts were not adequate to afford a full and fair hearing. There for the Bringles did not recieve a unencumbered full and fair and adequate hearing in the state court and the Bringles were otherwise denied due process of law in the state court proceeding.

The state claims the dependency hearing was pursuant to 13.34.210 (see RB page 2). That statute apparently does not provide for constitutional protection of custodial relatives interest in maintaining the stability and integrity of the familial relationships that they have. That law would appear to be unconstitutional when applied to custodial relatives living out of state for a long period of time and that statute would also appear to be inadequate in practice and also inadequate to allow full litigation of a constitutional claim. We might also note that the Bringles did file a 42 U.S.C. & 1983 action in the United States District Court Western District of Washington Case No C88-267T The Bringles were seeking declatory relief. Case was dismissed under principles of res judicata on February 3rd 1989 even though no inquiry was made regarding evidence to support the states contention that the Bringles constitutional rights were fully litigated in the state court. The Bringles are appealing this to the 9th circuit court of appeals.

3. Mis-Stated information- (refer to RB page 4). The remarks regarding the stress and spouses statement are not correct. That information was provided by a california caseworker who later recanted that information but the state would not except any new evidence and ignored the letter from the California Social Service Department trying to explain that. Also on page 4 of respondents Brief it states the Bringles placed their grandchildren with the derrick family in March 1986. This is a totally false statement as the Bringles never placed their grandchildren with the derricks or any one else. The children never spent one night with the derricks or anyone else during the one year they lived with the Bringles in California. The derricks were someone that the social services were considering as alternate placement if the Bringles decided to try the experiment that was suggested by the caseworkers. However the plan never worked. The state distorted this information to make it appear the children were not in a stable home. Also on page 4 of (RB) it states

the childrens safety was at risk. The childrens safety was never at risk and there is no evidence in the state record to even remotely suggest this. Statements like these have done the Bringles extreme harm and have prejudiced the courts to the point that they would never even allow us a full and fair hearing. Apparently the states courts by accepting the hearsay evidence as facts decided the Bringles were not good enough to be allowed to live with their grandchildren and permanently terminated their familial association.

4. Issue is not moot the Bringles did contest the adoption. They asked for a stay of adoption in juvenile court and filed a motion in court of appeals to have adoption stayed but before court could act the state finalized the adoption. They also asked the State Supreme Court to vacate the review hearing adoption order. The state now claims the Bringles could have filed for guardianship in the state of Washington (see page 5 RB) if they wanted permanent custody indeed we did file for guardian ship in California In july of 1986 pursuant to

28 U.S.C. & 1738A because according to that statute the state of washington no longer had continuing jurisdiction (see & 1738A (d)). The state of Washington did not meet the requirements necessary to sustain jurisdiction. The children had lived with their granparents in California for one year with no connection or any visitation by anyone in the state of washington. The review hearing did make a custody determination that should have been made in the childrens home state pursuant to Washingtons own statute Chapter 26.27.030 and also pursuant to 28 U.S.C. & 1738A. The state is misapplying the meaning of the Uniform Child Custody act saying there was no dispute over custody, indeed there was a dispute over custody.

5. The courts decision below was not correct (refer page 5 RB). No notice was given the Bringles and they could not have decided not to exercise their opportunity to appear if they did not know about the hearing. Even if the Bringles were given telephone notice as the state claims the opportunity would not have been fair since the hearing was

held some 1200 miles from the Bringles and their grandchildrens homestate and would have been impossible for the Bringles and their grandchildren to have friends, relatives, childrens Doctor and other important wittnesses testify. The Bringles are not seeking temporary caretaker status as the state claims on page 5 (RB). The state also are implying that a former attorney of the Bringles in Washington who helped them in there original efforts to obtain custody had knowledge of the time and date of the hearing and that he notified the Bringles. (see RB page 5) This is misleading and the Bringles former attorney submitted a affidavit in the Juvenile court stating he did not believe it was proper as he was not retained by the Bringles and he further stated in the affidavit that the state did not notify him of the time and date and that the state told him they would serve the Bringles direct in California but they never did. On page 5 of Respondents Brief there is little merit to the states conclusion that the Bringles are not surrogate parents as was Rivera. The Bringles were

the only family the children could have possibly known. The childrens ages were 1 year and 2 years of age at time the Bringles recieved custody. The state is completely mistating the facts in regards to placement in pre-adoptive home. At no time prior to or during the one year the children lived with their grandparents did they ever live in a pre-adoptive home. Any disruptions in their lives was caused by Washington. They ordered Patrick back to washington only to return him 8 months later and then after living in stable home with his grandparents and his sister for one full year the state ordered him back to Washinton state again. The Bringles involvment was not just temporary caretakers. The children were placed with their grandparents for the purpose of adoption, the state is trying to dispute the intent by saying it was only temporary. However the state cannot deny what the real intent was. The facts do not support justifying the breaking up of the Bringles extended family by the state.

CONCLUSION

The Bringles do have strong liberty interest and are not merely trying to interfere into the lives of their grandchildren. They are trying to restore their extended family. The passage of time does not diminish their liberty interest in protecting the stability and integrity of their familial relationship with their grandchildren. The Bringles are not responsible for this long delay and are entitled to due process of law. This Court should grant petition for Certiorari.

Respectfully submitted this 21st day of March 1989.

James A Bringle
15092 Sultana
Hesperia, Ca. 92345
(619) 244-6237
petitioner

Norma L. Bringle
15092 Sultana
Hesperia, Ca. 92345
(619) 244-6237
petitioner